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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**

| | | | |
|----|------------------------------------|---|--|
| 16 | JASON ZAJONC and DENNIS FOWLER, |) | Case Number: 4:14-cv-05563-EMC |
| 17 | individually and on behalf |) | |
| 18 | of all others similarly situated, |) | [PROPOSED] STIPULATED ORDER RE: |
| | |) | DISCOVERY OF ELECTRONICALLY |
| 19 | Plaintiffs, |) | STORED INFORMATION FOR |
| | |) | STANDARD LITIGATION |
| 20 | v. |) | |
| | |) | |
| 21 | MORGAN STANLEY & CO. LLC, f/k/a |) | |
| | Morgan Stanley & Co. Incorporated, |) | |
| 22 | MORGAN STANLEY SMITH BARNEY |) | |
| | LLC, and MORGAN STANLEY, |) | |
| | |) | |
| 23 | Defendants. |) | |

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1 **1. PURPOSE**

2 This Order will govern discovery of electronically stored information (“ESI”) in this
3 case as a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the
4 Discovery of Electronically Stored Information, and any other applicable orders and rules.

5 **2. COOPERATION**

6 The parties are aware of the importance the Court places on cooperation and commit to
7 cooperate in good faith throughout the matter consistent with this Court’s Guidelines for the
8 Discovery of ESI.

9 **3. LIAISON**

10 Plaintiffs’ and Defendants’ e-discovery liaisons, Paolo C. Meireles of Shavitz Law
11 Group, P.A. and Roberta Vespremi of Morgan Lewis, are and will be knowledgeable about and
12 responsible for discussing their respective ESI. Each e-discovery liaison will be, or have
13 access to those who are, knowledgeable about the technical aspects of e-discovery, including
14 the location, nature, accessibility, format, collection, search methodologies, and production of
15 ESI in this matter. The parties will rely on the liaisons, as needed, to confer about ESI and to
16 help resolve disputes without court intervention.

17 **4. PRESERVATION**

18 The parties have discussed their preservation obligations and needs and agree that
19 preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the
20 costs and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

- 21 a) Only ESI created or received between December 1, 2010 and the present will be
22 preserved;
- 23 b) The parties have exchanged a list of the types of ESI they believe should be
24 preserved and discussed, in general, and the descriptions of custodians, for whom
25 they believe ESI should be preserved.
- 26 c) The parties will agree on the number of custodians per party for whom ESI will be
27 preserved.
- 28 d) Defendants are in the process of assessing the accessibility of certain types of data.
 Defendants reserve their right to later designate certain types and/or sources of data
 as not reasonably accessible because of undue burden or cost pursuant to Fed. R.
 Civ. P. 26(b)(2)(B), or to assert any other objections to production they deem fit
 pursuant to the Fed. R. Civ. P.

- 1 e) In addition to the agreements above, the parties agree that data from video
2 surveillance tapes (to the extent any exist) could contain relevant information, but
3 under the proportionality factors need not be preserved, searched, reviewed, or
4 produced.

5. PRIVILEGE LOG AND REDACTION

- 5 a) The Parties agree that they need not initially exchange the text of litigation
6 hold/retention instructions issued in this litigation. The Parties reserve the right to
7 request such information as allowed by law.
8 b) In an effort to avoid unnecessary expense and burden, the Parties agree that, for
9 documents redacted or withheld from production on the basis of attorney-client
10 privilege, work product doctrine and/or any other applicable privilege, the Producing
11 Party will prepare a summary log containing, for each document claimed as
12 privileged, an export of all or a subset of the metadata fields listed in Table 1 (as
13 agreed upon by the Parties) to the extent such information exists and has not been
14 redacted for privilege. The export should include the following information:

- 12 • BEGNO
- 13 • ENDNO
- 14 • BEGATTACH
- 15 • ENDATTACH
- 16 • CUSTODIAN
- 17 • FROM
- 18 • TO
- 19 • CC
- 20 • BCC
- 21 • SUBJECT
- 22 • SENTDATE
- 23 • RECEIVEDDATE
- 24 • FILENAME
- 25 • AUTHOR
- 26 • CREATEDDATE
- 27 • FILEPATH - ALL
- 28 • PRIV_CLAIM

23 If the requesting party requires further information, it shall explain in writing the need
24 for such information and identify, by Bates number or other unique identifier, each
25 document for which it seeks this information. Within fifteen (15) days of such a
26 request, the Producing Party must either (i) provide the requested information or (ii)
27 challenge the request. If a Party challenges a request for further information, the
28 Parties shall meet and confer to try to reach a mutually agreeable solution. If they
cannot agree, the Parties must request a conference with the Court before any motions
may be filed.

6. SEARCH, IDENTIFICATION AND COLLECTION OF DOCUMENTS

- a) Except as otherwise agreed upon in this Stipulation, the Parties will continue to meet and confer in an effort to agree upon the following:
1. List of custodians;
 2. Search methodology to be applied, including, but not limited to, search terms and date restrictions; and
 3. Location of relevant data sources including custodial, non-custodial and third-Party.

7. PRODUCTION FORMATS

a) General Provisions.

The parties agree to produce documents in TIFF format, with metadata and extracted text/OCR, and Concordance-formatted load files, Excel-manipulable where appropriate. Each *.tiff file should be assigned a unique name matching the Bates number of the corresponding image. The Bates number should be consistent across the production, contain no special characters, and be numerically sequential within a given document.

Responsive attachments to documents should, when possible and when applicable, be assigned Bates numbers that directly follow in sequential order the Bates numbers on the documents to which they were attached. If a Bates number or set of Bates numbers is skipped, the skipped number or set of numbers should be noted, for example with a placeholder.

All images should be provided in single-page, Group IV TIFF with a resolution of 300 DPI. Bates numbers and confidentiality designations should be electronically branded on each produced *.tiff image. These .TIFF images should be provided in a separate folder and the number of TIFF files per folder should be limited to 1,000 files.

If particular documents warrant a different format, the parties will cooperate to arrange for the mutually acceptable production of such documents.

b) Deduplication.

The Parties shall make reasonable efforts to deduplicate ESI. ESI will be deduplicated vertically within each custodian and horizontally across custodians (“Global Deduplication”). ESI will be considered duplicative if it has the same content including metadata. For example, duplicates would include copies of the same electronic file saved on the local hard drives and/or network shared drives of multiple custodians, even if different instances of the file

1 reflect different dates created. Electronic files will be identified by Plaintiffs based upon
2 calculated MD5 Hash values and by Defendants based upon SHA-1 values for binary file
3 content. Duplicate email files will be identified by Plaintiffs based upon MD5 Hash values and
4 by Defendants based upon SHA-1 values for the message family, including parent object
5 attachments. Duplicate emails will be identified at a family level, including message and
6 attachment(s).

7 c) Email Thread Suppression.

8 Each Party also may deduplicate emails in such a way as to eliminate earlier or
9 incomplete chains of emails, and produce only the most complete iteration of an email chain.
10 Any deduplication tool used by a Party must ensure that an email will be suppressed only if its
11 recipients (including cc and bcc recipients), subject, body text (excluding specified automatic
12 footers, and normalized to consolidate white space), and attachments are wholly included in
13 another more complete email.

14 d) Searchable Format.

15 Unless otherwise agreed by the Parties, all documents shall be produced in an
16 electronically searchable format. The parties agree not to degrade the searchability of
17 documents as part of the document production process. Searchable text of the entire document
18 should be produced for every record, at the document level, except in the case of documents
19 produced in redacted form. OCR text must be provided for all documents that originated in
20 hard copy format to the extent feasible.

21 e) Document Text.

22 All unredacted documents should be provided with complete document-level extracted
23 text files. In the event a document contains text which is to be redacted, OCR text files should
24 be provided for any un-redacted portions of the documents. Document-level OCR text files
25 should be provided for any unredacted portions of redacted documents and for all hard copy
26 scanned documents. The extracted full text and/or OCR text for all deliverables should be in
27 separate document-level TXT files. These TXT files may either be provided in a separate
28 folder or included in the same folder as their corresponding images. The number of TXT files

1 per folder should be limited to 1,000 files.

2 f) Parent-Child Relationships.

3 For email collections, the parent-child relationships (the association between emails and
4 attachments) should be preserved. Email attachments should be consecutively produced with the
5 parent email record to the extent the attachment is non-privileged and responsive to a request for
6 production.

7 g) Dynamic Fields.

8 Documents with dynamic fields for file names, dates, and times will be processed to
9 show the field code (*e.g.*, “[FILENAME]” or “[AUTODATE]”), rather than the values for such
10 fields existing at the time the file is processed.

11 h) Word Processing Files.

12 All word processing files, including without limitation Microsoft Word files, will be
13 produced as *.tiff images. Word Processing files saved in Microsoft Office (and other similar
14 documents created in programs for which there is an option to show tracked changes and/or
15 comments as last saved by the custodian) will be processed to *.tiff format showing tracked
16 changes or comments.

17 i) Non-redacted Spreadsheet Files.

18 Spreadsheet files, including without limitation Microsoft Excel files, that do not require
19 redactions will be produced as native files showing comments and similar data. A UNC file path
20 must be included in the ESI load file. Additionally a bates-stamped *.tiff placeholder matching
21 the bates number of the native file, must be included in the production and reflected in the image
22 load file. To the extent Parties prefer native file redaction of Spreadsheet Files, the Parties will
23 meet and confer to discuss the form of production.

24 j) Presentation Files.

25 Presentation files, including without limitation Microsoft PowerPoint files, will be
26 processed to *.tiff format images showing comments, hidden slides, speakers’ notes, and similar
27 data. The Parties will meet and confer regarding production of presentation files with alternate
28 default settings.

k) Database Records.

1 To the extent that any Party requests information that is stored in a database or database
2 management system, including but not limited to records of Plaintiffs' and Class Members'
3 contact information, work telephone records, and/or log-in/log-out records, such information will
4 be produced by querying the database for discoverable information and generating a database
5 export, including record histories, in a reasonably usable and exportable electronic file (for
6 example, *.mdb format) for review by the requesting Party to the extent possible, and when
7 applicable and sufficient. To the extent this production format is not feasible, applicable, or
8 sufficient, or causes the producing Party undue burden, the Parties agree to meet and confer to
9 discuss the different form of production.

10 l) Embedded Files.

11 Embedded files are produced as independent document records. Embedded files should
12 be assigned Bates numbers that directly follow the Bates numbers on the documents within
13 which they are embedded.

14 m) Time Zone.

15 Unless otherwise agreed, all dynamic date and time fields, where such fields are
16 processed to contain a value, and all metadata pertaining to dates and times will be standardized
17 to one time zone. To the extent that is not possible, such as in the case of phone logs, the
18 producing party will provide further information to the requesting party, such as routing location
19 for phone calls. The Parties understand and acknowledge that such standardization affects only
20 dynamic fields and metadata values and does not affect, among other things, dates and times that
21 are hardcoded text within a file. Dates and times that are hard-coded text within a file (for
22 example, in an email thread, dates and times of earlier messages that were converted to body text
23 when subsequently replied to or forwarded; and in any file type, dates and times that are typed as
24 such by users) will be produced as part of the document text in accordance with Concordance
25 format.

26 n) Bates Numbering.

27 Files will be named according to the Bates number of the corresponding *.tiff image.
28 The Bates number will:

- i. be consistent across the production;

- ii. contain no special characters; and
- iii. be numerically sequential within a given document.

Attachments to documents will be assigned, whenever possible, Bates numbers that directly follow the Bates numbers on the documents to which they were attached. If a Bates number or set of Bates numbers is skipped, the skipped number or set of numbers will be noted. In addition, wherever possible, each *.tiff image will have its assigned Bates number electronically “burned” onto the image.

o) Load File Format.

ESI will be produced in standard Concordance load file format with an image file that is in .OPT format.

p) Media.

The producing Party shall produce documents on readily accessible, computer or electronic media as the Parties may hereafter agree upon, including CD-ROM, DVD, external hard drive (with standard PC compatible interface or access to a secure On-Line Repository agreed upon by the Parties), or via secure FTP site. Each piece of production media shall be assigned a production number or other unique identifying label corresponding to the date of the production of documents on the production media as well as the sequence of the material in that production. The producing Party shall accompany all document productions with a transmittal cover letter identifying by Bates number the documents produced.

q) Encryption.

To maximize the security of information in transit, any media on which documents are produced may be encrypted by the Producing Party using mutually agreeable encryption software. In such cases, the Producing Party shall transmit the encryption key or password to the Requesting Party, under separate cover, contemporaneously with sending the encrypted media.

r) Metadata to be Produced.

Metadata to be produced: The following metadata fields should be produced for each document to the extent that such information is available at the time of collection and processing, except that if a field contains privileged information, that privileged information may be redacted and noted in a corresponding privilege log. All requests should be read to

include a request for all metadata associated with all documents responsive to the request. The text and metadata of emails, attachments, and native file document collections should be extracted and provided in a .DAT file using the field definition and formatting described below.

| FIELD NAME | SAMPLE DATA | DESCRIPTION |
|----------------|--|---|
| FIRSTBATES | EDC0000001 | First Bates number of native file document/email |
| LASTBATES | EDC0000001 | Last Bates number of native file document/email **The LASTBATES field should be populated for single page documents/emails. |
| BEGATTACH | EDC0000001 | First Bates number of |
| ENDATTACH | EDC0000015 | Last Bates number of |
| PARENT_BATES | EDC0000001 | First Bates number of parent document/Email **This PARENT_BATES field should be populated in each record representing an attachment "child" document |
| CHILD_BATES | EDC0000002; EDC00000014 | First Bates number of "child" attachment(s); can be more than one Bates number listed depending on the number of attachments **The CHILD_BATES field should be populated in each |
| CUSTODIAN | Smith, John | Email: mailbox where the email resided Native: Individual from whom |
| ALL CUSTODIANS | Smith, John Cain, John Thompson, Frank | Custodial source(s) from which document was collected but subsequently suppressed as a duplicate during processing. |
| FROM | John Smith | Email: Sender Native: Author(s) of document **semi-colon should be used to separate multiple entries |
| TO | Coffman, Janice; LeeW [mailto:LeeW@MSN.com] | Recipient(s) **semi-colon should be used to separate multiple entries |

| FIELD NAME | SAMPLE DATA | DESCRIPTION |
|------------|--|--|
| CC | Frank Thompson [mailto: frank_Thompson@cdt.com] | Carbon copy recipient(s) **semi-colon should be used to separate multiple entries |
| BCC | John Cain | Blind carbon copy recipient(s) **semi-colon should be used to separate multiple entries |
| SUBJECT | Board Meeting Minutes | Email: Subject line of the email Native: Title of document (if available) |
| DATE_SENT | 10/12/2010 | Email: Date the email was sent Native: (empty) |
| TIME_SENT | 07:05 PM | Email: Time the email was sent Native: (empty) **This data must be a separate field and cannot be combined with the DATE SENT field |
| LINK | D:\001\EDC0000001.msg | Hyperlink to the email or native file document ** The linked file must be named per the FIRSTBATES number |
| MIME_TYPE | MSG | The content type of an Email or native file document as identified/extracted from the header |
| FILE_EXTEN | MSG | The file type extension representing the Email or native file document; will vary depending on the email format |

| FIELD NAME | SAMPLE DATA | DESCRIPTION |
|--------------|-------------|--|
| AUTHOR | John Smith | Email: (empty) Native: Author of the document *Parties acknowledge that the Author field may not actually reflect the author of the document. |
| DATE_CREATED | 10/10/2010 | Email: (empty) Native: Date the document was created *Parties acknowledge that the CREATEDATE field may not actually reflect the date the file was created, due to the ease of change to that field and the technical definition of the field (e.g., the created date and time reflects the date when the file was created in that particular location on the computer or on the other storage device location). |
| TIME_CREATED | 10:25 AM | Email: (empty) Native: Time the document was created *This data must be a separate field and cannot be combined with the DATE_CREATED field *Parties acknowledge that the CREATETIME field may not actually reflect the time the file was created, due to the ease of change to that field and the technical definition of the field (e.g., the created date and time reflects the time when the file was created in that particular location on the computer or on the other storage device location). |

| FIELD NAME | SAMPLE DATA | DESCRIPTION |
|--------------|-------------------------------------|---|
| DATE_MOD | 10/12/2010 | Email: (empty) Native: Date the document was last modified |
| TIME_MOD | 07:00 PM | Email: (empty) Native: Time the document was last modified **This data must be a separate field and cannot be combined with the DATE_MOD field |
| DATE_ACCESSD | 10/12/2010 | Email: (empty) Native: Date the document was last accessed |
| TIME_ACCESSD | 07:00 PM | Email: (empty) Native: Time the document was last accessed **This data must be a separate field and cannot be combined with the DATE_ACCESSD field |
| FILE_SIZE | 5,952 | Size of native file document/email in KB |
| PGCOUNT | 1 | Number of pages in native file document/email |
| PATH | J:\Shared\SmithJ\October Agenda.doc | File path/folder structure of original native file as it existed at the time of collection. <i>i.e.</i> path of email in mailbox (populate for email attachments also); filepath of edocs or scanned documents |

| FIELD NAME | SAMPLE DATA | DESCRIPTION |
|---|--|---|
| ALL PATHS | J:\Shared\SmithJ\October Agenda.doc O:\JohnSmith\October Agenda.doc C:\JS\MyDocuments\OctoberAgenda.doc | File path/folder structure of original native file as it existed at the time of collection but subsequently removed as a duplicate. <i>i.e.</i> path of email in mailbox (populate for email attachments also); filepath of edocs or scanned documents |
| INTMSGID | <000805c2c7lb\$75977050\$cb8306d1@MSN> | Email: Unique Message ID Native: (empty) |
| MD5 Hash (as to Plaintiffs) or SHA-1 (as to Defendants) | d13ldd02c5e6eec4693d9a069 8aff95c2fcab58712467eab4004583eb8fb7f89 | MD5 Hash (as to Plaintiffs) or SHA-1 (as to Defendants) value of the document. |
| TEXT | From: Smith, John Sent: Tuesday, October 12, 2010 07:05 PM To: Coffman, Janice Subject: Board Meeting Minutes Janice; Attached is a copy of the September Board Meeting Minutes and the draft agenda for October. Please let me know if you have any questions. John Smith Assistant Director Information Technology Phone: (202) 555-1 111 Fax: (202) 555-1112 Email: jsmith@xyz.com | Extracted text of the native file document/email |

9. DOCUMENTS PROTECTED FROM DISCOVERY

a) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-protected document or ESI, whether inadvertent or otherwise, is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privileged or work-product-protected documents in this case as part of a mass production is not itself a waiver in this case or in any other federal or state proceeding. This Stipulation shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d). Additionally, nothing contained in this Stipulation is intended to or shall serve to limit a Party's right to conduct a review of documents, ESI, or information (including metadata) for relevance, responsiveness, and/or segregation of privileged and/or protected information before production.

b) If any privileged or work product protected document or ESI is produced, inadvertently or otherwise, the party receiving produced documents ("Receiving Party") shall, at the request of the party producing those documents ("Producing Party"), promptly destroy such documents, including all later created excerpts, summaries, compilations, and other documents or records that include, communicate, or reveal the information claimed to be privileged or protected. A Receiving Party who receives a document or ESI that it knows or reasonably should know is privileged shall notify the Producing Party within 3 business days of discovery of the document.

10. MODIFICATION

This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court for good cause shown.

IT IS SO STIPULATED, through Counsel of Record.

1
2 Dated: August 31, 2015

By: /s/ Jahan C. Sagafi
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26 *Attorneys for Plaintiffs and proposed Class*
27 *Members*
28

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2 Dated: August 31, 2015

By: /s/ Roberta H. Vespremi
Roberta H. Vespremi

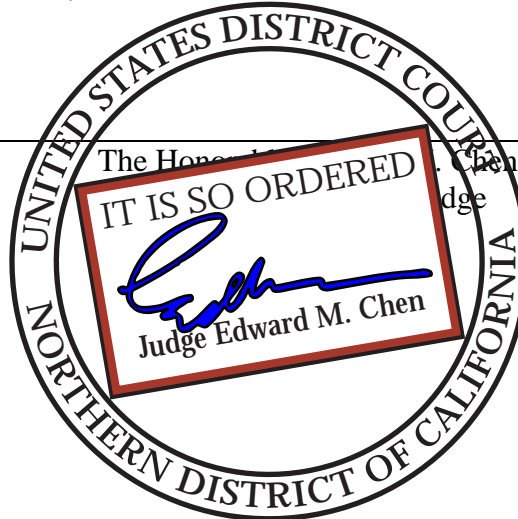
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PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 9/3/15



ATTESTATION OF SIGNATURE

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from the other signatory above.

DATED: August 31, 2015

OUTTEN & GOLDEN LLP

By: /s/ Jahan C. Sagafi

Attorney for Plaintiffs and proposed Class Members